



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 624161

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations holding, effective June 28, 2021, that the wages paid to the claimant, a professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10);

charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$1500.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$1900.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

The Administrative Law Judge held combined telephone conference hearings, at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By combined decisions filed December 14, 2021 (A.L.J. Case Nos. 021-43768 and 021-43773), the Administrative Law Judge sustained the initial determinations.

The claimant appealed the Judge's decision to the Appeal Board. By decisions filed May 8, 2022 (Appeal Board Nos. 620154 and 620155), the Board sustained the decision of the Administrative Law Judge in 021-43768 as to the issue of reasonable assurance of continued employment and rescinded the decision of the Administrative Law Judge in 021-43773, as to the recoverable overpayment initial determination and remanded the case to the

Hearing Section for a hearing and a decision on the recoverable overpayment initial determination.

The Administrative Law Judge held a telephone conference hearing, at which no testimony was taken. There were no appearances. By decision filed June 8, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded, again, to hold a hearing. On appeal, the claimant has indicated that he failed to appear at the last hearing because he was working, and that he had sent a letter to the Hearing Section requesting an adjournment of the hearing for that reason, which was not received for reasons unknown. In the interest of justice, the Board has determined to provide the claimant another opportunity to appear and testify in this matter.

A further hearing should be held, with respect to the issue of the recoverable overpayment of FPUC benefits and PEUC benefits, only. We have determined that the record was not adequately developed on this issue. A further hearing is necessary to give the parties an additional opportunity to provide testimony and other evidence on this issue only.

Towards that end, the claimant is directed to produce statements for the bank account into which his unemployment benefits were deposited for the period at issue, beginning June 28, 2021 ending September 12, 2021. He shall produce bank statements for the months of June 2021 through September 2021. In addition, as necessary, the hearing Judge shall question the claimant using the relevant benefit ledger that addresses the benefits received by the claimant during the period at issue. The hearing Judge may receive any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of the recoverable overpayment

of FPUC and PEUC benefits upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issue, only; and it is further

ORDERED, that the claimant produce bank statements for the bank account into which his unemployment benefits were deposited for the months of June 2021 through September 2021; and, it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issue only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

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MICHAEL T. GREASON, MEMBER